***Plessy* v. *Ferguson* (1896)**

**Background Summary and Questions**

In 1890, Louisiana passed a statute called the "Separate Car Act". This law declared that all rail companies carrying passengers in Louisiana had to provide separate but equal accommodations for white and non-white passengers. The penalty for sitting in the wrong compartment was a fine of $25 or 20 days in jail.

Two parties wanted to challenge the constitutionality of the Separate Car Act. A group of black citizens who raised money to overturn the law worked together with the East Louisiana Railroad Company, which sought to terminate the Act largely for monetary reasons. They chose a 30-year-old shoemaker named Homer Plessy, a citizen of the United States who was one-eighth black and a resident of the state of Louisiana. On June 7, 1892, Plessy purchased a first-class passage from New Orleans to Covington, Louisiana and sat in the railroad car for "White" passengers. The railroad officials knew Plessy was coming and arrested him for violating the Separate Car Act. Well known advocate for black rights Albion Tourgee, a white lawyer, agreed to argue the case for free.

Plessy argued in court that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution. The Thirteenth Amendment banned slavery and the Fourteenth Amendment requires that the government treat people equally. John Howard Ferguson, the judge hearing the case, had stated in a previous court decision that the Separate Car Act was unconstitutional if applied to trains running outside of Louisiana. In this case, however, he declared that the law was constitutional for trains running within the state and found Plessy guilty.

Plessy appealed the case to the Louisiana State Supreme Court, which affirmed the decision that the Louisiana law was constitutional. Plessy then took his case, Plessy v. Ferguson, to the Supreme Court of the United States, the highest court in the country. Judge John Howard Ferguson was named in the case because he had been named in the petition to the Louisiana State Supreme Court, not because he was a party to the initial lawsuit.

**Questions to Consider:**

1. What law did Homer Plessy violate?
2. How did Plessy violate this law?
3. What rights do the Thirteenth and Fourteenth Amendments provide?
4. Why did Plessy believe that the Separate Car Act violated these rights?
5. Judge Ferguson decided that the state could make laws for railroad companies that traveled within the state but not for those that traveled between states. On what basis can Judge Ferguson treat these two situations differently?
6. What claim did Plessy make to the Louisiana State Supreme Court? How did his claim reflect on his argument that his Fourteenth Amendment rights were violated?
7. Do you think it is possible for blacks and whites to be separate and equal? Why or why not? If so, describe a situation where people can be separate, but equal.

**Key Excerpts from the Majority Opinion**

**The decision was not unanimous.   
Speaking for a seven-person majority, Justice Henry Brown delivered the opinion of the court.**

This case turns upon the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. . . .

The constitutionality of this act is attacked upon the ground that it conflicts both with the thirteenth amendment of the Constitution, abolishing slavery, and the fourteenth amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the thirteenth amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. . . .

Indeed, we do not understand that the thirteenth amendment is strenuously relied upon by the plaintiff. . .

2. . . .The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. . . .

So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the fourteenth amendment than the Acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

**Questions to Consider from the Majority Opinion Reading:**

1. What do the justices state is the object of the Fourteenth Amendment?
2. The *Plessy* decision distinguishes between political and social equality. Discuss this distinction. Can one exist without the other?
3. What racial and cultural assumptions are inherent in the statement that "legislation is powerless to eradicate racial instincts or abolish distinctions based upon physical differences?"
4. The decision states that legislation cannot overcome social prejudice. Can it reinforce social prejudice? How?
5. How do you respond to the court's contention that if any inferiority is evident, it is only because colored people "choose" to interpret the act in that manner. Do you believe colored people had a choice whether or not to feel or not to feel inferior in light of such legislation?
6. According to Justice Brown's opinion, social equality must be the result of what three factors?
7. After the court dismissed the Thirteenth Amendment violation argument, it reduced the question before the court to whether or not Louisiana's legislation is reasonable. What is the "reasonable" standard and how did the court apply it in this case?

Think about the following question and write an answer for each: ***Does treating people equally mean treating them the same?***

1. A man and a woman apply for a job as a shoe sales person. What would the employer have to do to treat these two applicants equally?
2. Two students try to enter a school that has stairs leading to the entrance. One student is handicapped and the other is not. What would the school have to do to treat these two students equally?
3. Two students live in the same school district. The students are the same age, but they are different races. What does the school district have to do to treat these two students equally.